

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JERMAINE PERRY	:	
	:	CIVIL ACTION
v.	:	NO. 00-4378
	:	(Crim. No. 95-456)
UNITED STATES OF AMERICA	:	

MEMORANDUM ORDER

This is a petition to vacate, set aside or correct a sentence pursuant to 28 U.S.C. § 2255. The sole ground asserted is that petitioner received an "improbable sentence." Petitioner states that "my charge carry from 60 to 93 months" and that he was advised by the assistant U.S. attorney that he would be sentenced at the bottom of that range if he pled guilty.

Petitioner is a career offender whose sentencing guideline range was in fact 188 to 235 months of imprisonment. Indeed, with no prior criminal history, petitioner's range would have been 108 to 135 months of imprisonment.

Petitioner executed a plea agreement and on November 27, 1995 pled guilty to distributing crack cocaine within 1,000 feet of a protected location in violation of 21 U.S.C. § 860. In the plea agreement and under oath at his plea colloquy, petitioner acknowledged that his offense carried a maximum penalty of 40 years of imprisonment and that no promises had been made as to the sentence he would ultimately receive.

In return for promised cooperation, the government filed a departure motion which the court granted. On April 15, 1996, defendant was sentenced to imprisonment for 94 months to be followed by six years of supervised release. Petitioner was represented by highly experienced and capable counsel.

Petitioner has provided no explanation for the contradiction of his prior sworn statements. His claim is belied by the record in this case. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (a defendant's "declarations in open court carry a strong presumption of verity"); United States v. Cervantes, 132 F.3d 1106, 1110 (5th Cir. 1998) (allegation of undisclosed promises to induce plea properly rejected summarily where petitioner fails to present independent corroboration and claim is inconsistent with record in case); United States v. Gonzales, 970 F.2d 1095, 1100-01 (2d Cir. 1992) (unsupported allegations contradicting defendant's statements at plea colloquy properly rejected); United States v. Rogers, 848 F.2d 166, 168 (11th cir. 1988) (defendant bears "heavy burden" to show statements under oath at plea colloquy were false); Bryon v. United States, 492 F.2d 775, 780 (5th Cir. 1974) (relief summarily denied where petitioner merely contradicts prior in court statements), cert. denied, 419 U.S. (1975); Nwachia v. United States, 891 F. Supp. 189, 195-96 (D.N.J. 1995) (summarily rejecting allegations of undisclosed promise by government without explanation for

contradictory statements during plea colloquy), aff'd, 77 F.3d 463 (3d Cir. 1996).

Moreover, this petition is clearly foreclosed by the one year limitation period in § 2255. Petitioner obviously would have been aware by the time of sentencing of any prior representation by the prosecutor and of the sentence actually imposed. That was more than four years prior to the filing of this petition.

ACCORDINGLY, this day of September, 2000, **IT IS HEREBY ORDERED** that petitioner's petition to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 is **DENIED** and the above action is **DISMISSED**. A certificate of appealability pursuant to 28 U.S.C. § 2253(c)(1)(B) is not issued.

BY THE COURT:

JAY C. WALDMAN, J.